Remarks

The applicant has a unique system of forming concrete posts using bags. The bags are formed as sleeves that have woven fabric and are attached at a tab on the length. The prior art shows heavy paper cardboard tubes. These are not foldable, not flexible and take a lot of room for transporting. The bag system allows the user to transport the forms without a pickup truck.

Therefore, the applicant invented a system that not obvious. The prior art takes up a substantial amount of volume. For example card board forms for 10 columns would require a pickup truck to transport them all. On the other hand, the same 10 form bags can be fit into a small box about the size of the briefcase. Therefore, the present invention has a substantial improvement over the prior art. Furthermore, the forms are reusable and mechanically superior. The forms can also receive decorative markings.

Due to the superior and unique system of forming the concrete posts with the bag system presented in the current embodiments, the applicant asks that the examiner consider the lack of flexible tube form elements in the past, and the lack of teaching of the prior art.

Pruett shows a tube form element, but it is not flexible in the same way that woven fabric is flexible. Pruett teaches a rigid tube element, rather than a flexible one. Furthermore, there is no motivation to combine the teaching of Pruett with the teaching of Mohss. Mohss does not provide the physical novel elements of having the tab and woven fabric configuration in use with a concrete column, or post. Therefore, there is no motivation to combine. The fact that there is no reference showing the use of flexible woven fabric tube form with longitudinal tab, shows that the invention is both novel and not obvious.

Similarly, Chatelian does not show the steps of securing the tab of the form to the vertical members. Chatelian does not teach making a concrete post using the method of securing a tab on a vertical member. Therefore, Chatelian in combination with Pruett does not make the invention obvious. This argument would apply to claim 17, 18, 20, 21, 23, 26 and 24 as well.

Cardwell does teach a strut, however the strut of Cardwell is not used for the purpose of making a concrete post using the method of securing a tab on a vertical member of a flexible form. There is no motivation in the prior art to combine Cardwell with the support structure of the other prior art references cited.

O'Flaherty also does not teach making a concrete post using the method of securing a tab on a vertical member of a flexible form. There is no motivation in the prior art to combine O'Flaherty or Cardwell with the support structure of the other prior art references cited.

It is respectfully submitted that the Examiner, having studied Applicant's disclosure, attempted to reconstruct the prior art by selecting references having just "this" feature and just "that" feature. Nor has the Examiner provided any motivation for combining teachings regarding controlling the acoustics of hardwood flooring with teachings regarding the recyclability of facer material. Thus, the Examiner appears to be using hindsight in arriving at the particular combination that forms the basis of the present rejection. The Examiner is not permitted to the benefit of a careful study of Applicant's disclosure. Rather, the Examiner's task is to disregard what Applicant has just taught him or her about the invention, and cast his or her mind back to the time just prior to the time the invention was made. As noted in *Orthopedic Equipment Co. v. United States*, 702 F.2d 1005, 1012, 217 USPQ 193, 199 (Fed. Cir. 1983):

> It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness in a court of law.

Also pertinent is the Federal Circuit's admonition in *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984):

> To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the

> insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.
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> It is difficult but necessary that the decision maker forget what he or she has been taught at trial about the claimed invention and cast the mind back to the time the invention was made (often as here many years), to occupy the mind of one skilled in the art who is presented only with the references, and who is normally guided by the then-accepted wisdom in the art.

It is all too tempting to conclude that a combination would have been obvious because each of the features of the combination is individually "old". However, this was scotched years ago by Judge Learned Hand in *B.G. Corporation v. Walter Kidde & Co., Inc.*, 79 F.2d 20, 22 (2d Cir. 1935):

> For these reasons the defendant argues that the supposed invention is no more then a substitution of material familiar to the art in the same uses; an aggregation in which each part performs as it did before. We may concede as much arguendo, for the same may be said of every invention. All machines are made up of the same elements; rods, pawls, pitmans, journals, toggles, gears, cams, and the like, all acting their parts as they always do and always must. All compositions are made of the same substances, retaining their fixed chemical properties. But the elements are capable of an infinity of permutations, and the selection of that group which proves serviceable to given need may require a high degree of originality. It is that act of selection which is the invention; and it must be beyond the capacity of common-place imagination.

Later, in *Reiner v. I. Leon Co. Inc.*, 285 F.2d 501, 503 (2d Cir. 1960), Judge Hand said:

> It is idle to say that combinations of old elements cannot be inventions; substantially every invention is for such a "combination": that is to say, it consists of former elements in a new assemblage. All the constituents may be old, if their new concourse would "have been obvious at the time the invention was made to a person having ordinary skill in the art" (§ 103, Title 35).